IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.566 of 2018

1.Kuppammal
2.A.Maharani (Minor)
3.A.Suriya (Minor)
4.A.Mahalakshmi (Minor)
5.Iyyappan (Minor)
6.Asalambu
(Minor petitioners 2 to 5 are rep.
By their mother and next friend
Mrs.Kuppammal) ..Appellants

Versus

1.S.Arun

2.The New India Assurance Company Limited,
(Motor Third Party Cell)
No.45, Moore Street, 5th Floor,
Chennai - 600 001.
(Since R1 remained exparte before the Tribunal
his presence may be dispensed with) ..Respondents

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.04.2017 made in M.C.O.P.No.5883 of 2015 on the file of the Motor Accident Claims Tribunal, Chied Judge Small Causes Court, Chennai.

For Appellants : Mr.M.Malar
For Respondents : Mr.K.Thirunavukkarasu for R2.

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J U D G M E N T

The petitioners/appellants have filed this appeal against the judgment and decree dated 11.04.2017 made in M.C.O.P.No.5883 of 2015 on the file of the Motor Accident Claims Tribunal, Chief Judge Small Causes Court, Chennai.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a fatal case. The case of the petitioners/appellants is that on 07.07.2015 at 18.30 hours, while the deceased was crossing the old

Mahabalipuram Road near Indian Petrol Bunk, Kanchipuram District, the 1st respondent lorry bearing Registration No.TN-32-L-4942 came at high speed dashed against the deceased Azhagappan, causing him fatal injuries, resulting in his death. Subsequently, he died in the hospital on 09.07.2015. The deceased was aged 39 years and working as a self-employed dry cleaner was earning Rs.700/- per day. The petitioners who are the wife, children and mother of the deceased were depending on the income of the deceased. Due to the sudden demise of the said Azhagappan, the petitioners/appellants have lost the only bread winner of the family. Hence, the petitioners/appellants seek a sum of Rs.30,00,000/- as compensation from the respondents, who are the owner and insurer of the offending vehicle.

3. On the other hand, opposing the claim of the petitioners/appellants, by filing counter, the 2nd respondent-Insurance Company contends that the accident did not occur in the manner alleged by the petitioners/appellants. The lorry bearing Registration No.TN-32-L-4942 was not insured with the 2nd respondent-Insurance Company and the said vehicle was not involved in the accident. The driver of the said lorry was did not possess valid driving license at the time of accident, the said lorry was driven without valid permit and fitness certificate. The accident did not occur due to the negligence of the lorry driver, but only due to the negligence of the deceased-Azhagappan. The claim of the petitioners/appellants was exorbitant and the petition is liable to be dismissed.

4. Before the Tribunal, the petitioners/appellants examined P.W.1 and P.W.2 produced documents Exs.P.1 to P.12. To prove their contention, the respondents produced Exs.R.1 to R.3, but no oral evidence was let in. On careful analysis of the evidence available on record, the Tribunal found that the negligence of the 1st respondent-vehicle driver alone caused the accident and passed an award for a sum of Rs.18,20,000/- payable by the respondents to the petitioners/appellants. Being not satisfied with the quantum of the award, the petitioners/appellants have come forward with the present appeal.

5. Heard both sides.

6. The learned counsel for the petitioners/appellants contends that the Tribunal failed to consider the evidence of P.W.1 and P.W.2 and wrongly fixed the income of the deceased at Rs.8,000/- per month, even though he was earning Rs.700/- per day. The multiplier adopted by the Tribunal is not correct. The amount awarded under different heads is very meagre. Further, the learned counsel for the

petitioners/claimants contented that the deceased was in the hospital for two days immediately, after the occurrence and as such, he is entitled for compensation towards Pain and Sufferings underwent by him. Thus, the petitioners/appellants sought for enhancement of the award amount by entertaining the appeal.

7. Per contra, the learned counsel for the 2nd respondent-Insurance Company contends that the accident occurred only due to the negligence of the deceased and as such, the petitioners/appellants are not entitled for any compensation. The Tribunal has passed an award which itself is on higher side and there is no need for any further enhancement. The 2nd respondent-Insurance Company contends that the claim of the petitioners/appellants is highly excessive and sought for dismissal of the appeal.

8. The wife of the deceased, who deposed as P.W.1, stated about the accident which took place on 07.07.2015, resulting in the death of her husband. However, P.W.1 is not an eye-witness to the occurrence. To prove the nature of accident, the petitioners/appellants examined eye-witness to the occurrence as P.W.2 and he clearly stated that on 07.07.2015 at about 6.30 p.m., while he was in his Petrol bunk Shop in the old Mahabalipuram Road, he saw a male person was crossing the road in the pedestrian near his shop and at that time a lorry bearing Registration No.TN-32-L-4942 came at high speed, dashed against the said deceased-Azhagappan, causing him multiple grievous injuries. There is no contra evidence let in by the respondents. It is clear that Ex.P.1 - F.I.R, corroborates the version of accident given by P.W.2. In such circumstances, the Tribunal rightly concluded on the basis of P.W.1 and P.W.2 oral evidence as well as the contention of Ex.P.1 - F.I.R that the negligence of the 1st respondent-lorry driver alone caused the accident and the same is just and proper and does not warrant any interference. The 1st respondent-lorry was involved in the accident and the same is admitted by the respondents. As such, the respondents are liable to pay compensation.

9. The learned counsel for the petitioners/appellants claimed that the deceased was aged 39 years at the time of accident. In Ex.P.2 - Post mortem certificate, the age of the deceased was stated to be 40 years and in the absence of any other materials on record, on the basis of Ex.P.2 - Post moterm certificate and Ex.P.3 - Death certificate, his age is fixed as 40 years. Considering the age of the deceased was 40 years, the multiplier to be applied is '15'.

10. The deceased was stated to be working as a dry cleaner earning Rs.700/- per day. However, there is no proof produced by the petitioners/appellants in support of the said contention. The Tribunal fixed the income at Rs.8000/- per month. The petitioners/appellants seek to fix the monthly notional income at Rs.15,000/- at least. Considering the rival contention and the fact that the deceased was working as a dry cleaner, it is appropriate to fix the notional monthly income of the deceased at Rs.11,000/- per month. Considering the age of the deceased was 40 years and he being a self employed person, 25% of the income has to be added towards future prospects. As the deceased was having five dependants, from his income 1/4th is to be deducted towards personal expenses and the correct multiplier to be applied is '15'. Hence, his contribution to the family is calculated as under:-

[((Rs.11000+ 25%(13750)) - 1/4(3437))] = Rs.5,417/-
Rs.10,313 x 12 x 15 = Rs.18,56,340/-

Thus, a sum of Rs.18,56,340/- is granted as compensation under the head "Loss of Income".

11. In respect of awarding compensation under conventional heads, as per the Constitution Bench judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation has to be awarded towards loss of estate, loss of consortium and funeral expenses and hence, this court is inclined to grant a sum of Rs.15,000/- each towards loss of estate and funeral expenses and for loss of consortium a sum of Rs.40,000/- is awarded.

12. The learned counsel for the Petitioners/Appellants also contended that the petitioners/appellants 2 to 6 who are the minor children and aged mother of the deceased are suffering from loss of Love and Affection caused due to the demise of the said Azhagappan. The learned counsel further contended that the Apex Court in the recent decision reported in 2017 SCC Ker 23174 [1.Valsamma and others Vs. V.A.Baiju, 2. Rev.FR.Joseph Vattakalam, and 3.The National Insurance Co.Ltd., - MACA.Nos.711 and 921 of 2010] and the ruling of this Court reported in 2018 (1) TNMAC 289 [Brach Office, New India Assurance Company Ltd., Vs. Meenakshi & Others], has considered the issue in detail and awarded a sum of Rs.20,000/- each towards loss of love and affection to the mother and children of the deceased. Following the said Ruling, this court is also of the view that there is no bar or impediment to grant compensation under the head Loss of love and affection to mother and children of the deceased. As such, this court is inclined to award Rs.20,000/- each to the 2 to 6th petitioners/appellants

(total amount under the head "loss of love and affection" 1,00,000/-). Consequently, the modified compensation is as under:-

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of Income	16,20,000.00	18,56,340.00
2	Funeral Expenses	25,000.00	15,000.00
3	Loss of Consortium	50,000.00	40,000.00
4	Loss of Estate	-	15,000.00
5	Love and Affection	1,20,000.00	1,00,000.00
6	Transport Charges	5,000.00	-
7	Total	18,20,000.00	20,26,340.00

13. In the result, the Civil Miscellaneous Appeal is Allowed as follows:-

(i) The award of the Tribunal is enhanced to Rs.20,26,340/- from Rs.18,20,000/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The apportionment of the modified enhanced award amount is as follows:-
1st and 6th petitioners - 10% each
2nd to 5th petitioners - 20% each

(iv) In view of the above enhanced award amount, the 2nd respondent-Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment. The share of the minors is directed to be deposited in any one of the nationalised banks till they attain majority.

(v) On such deposit, the 1st and 6th petitioners/1st and 6th appellants are permitted to withdraw their share amount of award as above by filing proper application before the Tribunal. As far as 2 to 5 petitioners share amount is concerned only the interest accrued therein shall be withdrawn by the 1st petitioner/mother once in three months. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on filing of such application.

(vi) Petitioners/appellants shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount, if any.

No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

bri

To
1.The Chief Judge Small Causes Court,
Chennai.

2.The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.M.Malar , Advocate SR.No. 37091
+1cc to Mr.K.Thirunavukkarasu , Advocate SR.No. 36831

C.M.A.No.566 of 2018

ASK(12/11/2018)